

CLAUSE H-13 – INSURANCE - LIABILITY TO THIRD PERSONS (August 2002)

- (a) (1) Except as provided in subparagraph (a)(2) of this clause, the Subcontractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Subcontracting Officer may require under this subcontract.
- (2) The Subcontractor may, with the approval of the Subcontracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Subcontractor is qualified pursuant to statutory authority.
- (3) All insurance required by this paragraph shall be in a form and amount for those periods as the Subcontracting Officer may require or approve and with insurers approved by the Subcontracting Officer.
- (b) The Subcontractor agrees to submit for the Subcontracting Officer's approval, to the extent and in the manner required by the Subcontracting Officer, any other insurance that is maintained by the Subcontractor in connection with the performance of this subcontract and for which the Subcontractor seeks reimbursement.
- (c) The Subcontractor shall be reimbursed:
 - (1) For that portion (i) of the reasonable cost of insurance allocable to this subcontract and (ii) required or approved under this clause; and
 - (2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this subcontract. These liabilities must arise out of the performance of this subcontract, whether or not caused by the negligence of the Subcontractor or of the Subcontractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by SURA. These liabilities are for:
 - (i) Loss of or damage to property (other than property owned, occupied, or used by the Subcontractor, rented to the Subcontractor, or in the care, custody, or control of the Subcontractor); or
 - (ii) Death or bodily injury.
- (d) SURA's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this subcontract shall be construed as implying that SURA will, at a later date, appropriate funds sufficient to meet deficiencies.
- (e) The Subcontractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities):
 - (1) For which the Subcontractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the subcontract;
 - (2) For which the Subcontractor has failed to insure or to maintain insurance as required by the Subcontracting Officer; or
 - (3) That result from willful misconduct or lack of good faith on the part of any of the Subcontractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operations at any one plant or separate location in which this subcontract is being performed; or
 - (iii) A separate and complete major industrial operation in connection with the performance of this subcontract.
- (f) The provisions of paragraph (e) of this clause shall not restrict the right of the Subcontractor to be reimbursed for the cost of insurance maintained by the Subcontractor in connection with the performance of this subcontract other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this subcontract.
- (g) If any suit or action is filed or any claim is made against the Subcontractor, the cost and expense of which may be reimbursable to the Subcontractor under this subcontract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Subcontractor shall:
 - (1) Immediately notify the Subcontracting Officer and promptly furnish copies of all pertinent papers received;
 - (2) Authorize SURA representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

- (3) Authorize SURA representatives to settle or defend the claim and to represent the Subcontractor in or to take charge of any litigation, if required by SURA, when the liability is not insured or covered by bond. The Subcontractor may, at its own expense, be associated with the SURA representatives in any such claim or litigation.